A

CANTONA LIM XIANG KIM v. PP

COURT OF APPEAL, KUCHING
TENGKU MAIMUN TUAN MAT JCA
YAACOB MD SAM JCA
ZABARIAH MOHD YUSOF JCA
B [CRIMINAL APPEAL NO: Q-09-415-10-2017]
18 MARCH 2019

ROAD TRAFFIC: *Accident – Causing death by reckless or dangerous driving – Accused charged under s. 41(1) of Road Transport Act 1987 – Accused allegedly lost*
C *control of car when another car overtook and splashed water on accused's windscreen, impairing his vision – Whether defence probable – Whether accused drove in dangerous manner sufficient to constitute offence under s. 41(1) – Whether ingredients of charge proved beyond reasonable doubt – Whether death of deceased solely caused by accused – Whether there was intervening cause contributing to*
D *deceased's death*

CRIMINAL PROCEDURE: *Appeal – Appeal against conviction and sentence – Accused charged under s. 41(1) of Road Transport Act 1987 – Offence of causing death by reckless or dangerous driving – Accused allegedly lost control of car when another car overtook and splashed water on accused's windscreen, impairing his*
E *vision – Magistrates' Court convicted accused for offence and sentenced him to three years' imprisonment and fine of RM6,000 – High Court affirmed conviction but reduced imprisonment from three years to two years – Whether defence probable – Whether ingredients of charge proved beyond reasonable doubt*

F ***CRIMINAL PROCEDURE:*** *Charge – Framing of – Accused person charged for causing death by reckless or dangerous driving – Offence under s. 41(1) of Road Transport Act 1987 – Accused's defence imported into charge – Whether bad in law, erroneous and illegal – Whether rendered charge defective – Whether occasioned miscarriage of justice – Whether curable under s. 422 of Criminal Procedure Code*

G The appellant ('the accused') was charged, at the Magistrates' Court, for causing death by reckless or dangerous driving, an offence under s. 41(1) of the Road Transport Act 1987 ('Act'). In his defence, the accused explained that the accident happened because he lost control of his car when another car overtook him, causing the water on the road to splash on his windscreen and impairing his vision. Convicting the accused for the offence, the
H Magistrate found that the accused (i) was driving at an excessive speed prior to the accident; (ii) lost control of his car, hit the road divider and crossed onto the opposite lane and collided with two motorcycles thus causing the death of the deceased; and (iii) created a dangerous situation by failing to take into consideration the condition of the road and the amount of traffic
I expected. The accused was sentenced to three years' imprisonment and a fine of RM6,000, in default six months' imprisonment. The Magistrate further ordered that the accused's driving licence be suspended and the particulars of the offence be endorsed on the same. Aggrieved, the accused appealed to

the High Court against his conviction and sentence on the grounds that (i) the charge against him was wrongly framed as his defence was erroneously and illegally imported into the charge; and (ii) he should not have been found guilty of dangerous driving. The prosecution, on the other hand, cross-appealed against the inadequacy of the sentence. The High Court dismissed the accused's appeal against his conviction and the prosecution's cross-appeal. However, the High Court allowed the accused's appeal against the sentence and, while maintaining the fine, reduced the term of imprisonment from three years to two years. Hence, the present appeal. The issues that arose for adjudication were whether the courts below erred in failing to (i) find that the charge was bad in law when his defence was erroneously and illegally imported into the charge; and (ii) apply an objective test in determining whether the accused was driving in a manner that was dangerous to constitute an offence under s. 41(1) of the Act. Objecting to the appeal, the prosecution argued that (i) the extra facts incorporated into the body of the charge, though not an ingredient of the charge, was to give the accused sufficient notice for purposes of preparing his defence; (ii) the incorporation of the extra facts was a mere irregularity which did not occasion any failure of justice and was curable under s. 422 of the Criminal Procedure Code ('CPC'); and (iii) there was no failure of justice as the accused was able to meet the charge by adducing evidence to mount his defence.

Held (allowing appeal)
Per Tengku Maimun Tuan Mat JCA delivering the judgment of the court:

(1) The incorporation of 'iaitu semasa bergerak lurus telah hilang kawalan lalu masuk ke laluan bertentangan …' in the charge against the accused, for an offence under s. 41(1) of the Act had not occasioned a failure of justice to the accused. Neither was the accused misled in his defence. There was no reason to interfere with the findings of the High Court that the charge had informed the accused with certainty and accuracy and that, even if there was any error or omission, it was curable under s. 422 of the CPC. (para 22)

(2) The accused was charged under the third limb of s. 41(1) of the Act *ie*, for the offence of causing death by driving in a manner which is dangerous to the public. The accused's defence, that his vision was impaired due to the splash of water on his windscreen caused by another car which overtook him prior to the accident, was not challenged by the prosecution. The Magistrates' Court and the High Court failed to give sufficient evidence to the fact that the obvious and serious risk, which resulted in the death of the deceased, was not solely caused by the accused. There was an intervening cause which contributed to it and, when viewed objectively, could not be said to be the fault of the accused. (paras 24 & 27)

(3) Apart from the fact that the accused had collided into, and caused the death of, the deceased, no other evidence was led to show his recklessness. It was not the law that merely because an accident happened, which led to fatal consequences, it followed that the appellant was driving in a manner dangerous to the public. The prosecution needed to show something more *ie*, that the accused was driving in a manner dangerous to the public; that the accused was driving in a manner which showed a selfish disregard for the safety of other road users. This element was conspicuously absent in the prosecution's case. The essential, or core, ingredients of recklessness, under s. 41(1) of the Act were not proven beyond reasonable doubt by the prosecution. However, the prosecution had established a case against the accused for driving without due care and attention, or without reasonable consideration, an offence under s. 43(1) of the Act. (paras 28 & 29)

(4) The conviction and sentence passed by the Magistrates' Court, which were affirmed by the High Court, were set aside and substituted with a conviction under s. 43(1) of the Act. The accused was sentenced to a fine of RM10,000, in default three months' imprisonment. The particulars of such conviction were ordered to be endorsed on the accused's driving licence, pursuant to s. 43(2) of the Act. (paras 30 & 31)

Case(s) referred to:

Davendar Singh Sher Singh v. PP [2012] 1 LNS 261 CA ***(refd)***
Hamit Matusin & Ors v. Penguasa Tanah dan Survei & Anor And Another Appeal [2006] 2 CLJ 251 CA ***(refd)***
Lim Chin Poh v. PP [1969] 1 LNS 92 HC ***(refd)***
PP v. Ahmad Firdaus Zulkifli [2017] 1 LNS 113 CA ***(refd)***
PP v. Lee Hong Kee [1968] 1 LNS 104 HC ***(refd)***
PP v. Ong Kia Chan [2006] 4 CLJ 334 HC ***(refd)***
PP v. Zulkifli Omar [1998] 1 CLJ 1079 HC ***(refd)***
Ramiah v. PP [1972] 1 LNS 120 HC ***(refd)***
Regina v. Gosney [1971] 3 All ER 220 ***(refd)***
Tan Thang Sang v. PP; Choong Sze Foong v. PP [1973] 1 LNS 158 HC ***(refd)***
UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor [2010] 9 CLJ 785 FC ***(refd)***

Legislation referred to:

Criminal Procedure Code, s. 422
Road Transport Act 1987, ss. 41(1), 43(1), (2)

For the appellant - Shankar RP Asnani & Daniel CL Ling; M/s Thomas, Shankar Ram & Co
For the respondent - Mohd Taufik Mohd Yusoff; DPP

[Editor's note: For the High Court judgment, please see Cantona Lim Xiang Kim v. PP [2017] 1 LNS 1613 (overruled).]

Reported by Najib Tamby

JUDGMENT

Tengku Maimun Tuan Mat JCA:

[1] The appellant ("the accused") was charged in the Magistrate's Court at Kuching for an offence under s. 41(1) of the Road Transport Act 1987 ("the Act") for causing the death of Unus bin Alek ("the deceased") by reckless or dangerous driving. The charge against the accused reads:

> Bahawa kamu pada 16.11.2014 jam lebih kurang 06.00 petang di Jalan Batu Kawa, di daerah Kuching dalam Negeri Sarawak sebagai pemandu motorkar nombor pendaftaran QBC4445 jenis Proton Saga, telah memandu dengan cara yang setelah mengambil perhatian segala hal keadaan adalah merbahaya kepada orang awam iaitu semasa bergerak lurus telah hilang kawalan lalu masuk kelaluan bertentangan dan melanggar dengan (2) buah motosikal jenis Modenas Kriss nombor pendaftaran QAD7682, motosikal jenis SYM BX110 nombor pendaftaran QAA3847H dan motorkar jenis BMW nombor pendaftaran QSH7623 yang bergerak dari arah laluan hingga menyebabkan kematian kepada mangsa yang bernama Unus bin Alek (L) KPT: 570410-13-5173 dan oleh yang demikian kamu telah melakukan kesalahan di bawah seksyen 41(1) Akta Pengangkutan Jalan 1987 dan boleh dihukum di bawah Akta yang sama.

[2] The accused claimed trial. At the conclusion of the trial, the Magistrate found the accused guilty and convicted him as charged. The accused was sentenced to three years' imprisonment, the sentence to commence from the date of conviction, and a fine of RM6,000 in default, six months' imprisonment. The Magistrate further ordered that his driving licence be suspended and particulars of the offence be endorsed on the driving licence.

[3] It was the finding of the Magistrate that the accused was driving at an excessive speed prior to the accident, such that he lost control of the car, hit the road divider and crossed onto the opposite lane resulting in the collision with two motorcycles, and the death of the deceased. The Magistrate further found that the accused, while driving, had failed to take into consideration the condition of the road and the amount of the traffic expected on the road and thus, had created a dangerous situation. The Magistrate held *inter alia*:

> 6. … Knowing that the (*sic*) it was drizzling as testified by the witnesses which court was clearly in doubt it will again create (*sic*) a pool or puddles of water that the accused claimed had caused a splash onto his windscreen and resulted to his temporary loss of vision as he alleged. He should have taken (*sic*) into consideration that the road is wet and extra precaution should be taken into consideration when driving in such situation.
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> ….
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> 8. Having directed my mind on the evidence both for and against the prosecutions and the evidence of the defence presented before me and based on my above reasoning, I have asked myself is there sufficient

A evidence to convict the Accused even if he elects to remain silent when defence is called: and the answer is clearly in the positive. Defence has failed to raise any reasonable doubt against the Prosecution's case.

9. Accordingly I hereby convict the accused person of the charge preferred against him.

B **[4]** Aggrieved, the accused appealed to the High Court against both conviction and sentence whilst the prosecution cross-appealed against inadequacy of the sentence.

[5] The High Court dismissed the accused's appeal against conviction but allowed his appeal against sentence. The term of imprisonment was reduced C from three years to two years and the fine was maintained. The appeal by the prosecution was dismissed. Pending appeal, the custodial sentence was stayed.

[6] At the High Court, the accused's complaints were: (a) that the charge D against him was wrongly framed and was bad in law; and (b) that the Magistrate had mangled the issues of *actus reus* and *mens rea* which should be dealt with objectively. On the first issue, learned counsel submitted that the defence of the accused that he had lost control of his car and had caused the accident, had been erroneously and illegally imported into the charge. Thus, the charge was an embarrassment and had caused confusion to him. E

[7] On the second issue, learned counsel contended that the accused should not have been found guilty of dangerous driving. It was the defence of the accused that the accident occurred because there was a splashing of water on his windscreen caused by another car. This had impaired his vision F on the road and consequently, had caused him to lose control of his car. In response, the prosecution argued that the Magistrate had, in fact, directed his mind in deciding whether the accused had committed the act of dangerous driving. It was the finding of the Magistrate that the accused was speeding and due to the excessive speed, the car hit the road divider and flew to the opposite lane and caused the death of the deceased which fact was never G challenged or denied by the defence.

[8] On the first issue, the learned Judicial Commissioner agreed with the prosecution that the charge had informed the accused with certainty and accuracy and that any errors or omissions in the charge, if any, were curable H under s. 422 of the Criminal Procedure Code.

[9] On the second issue, the learned Judicial Commissioner found that the Magistrate was correct when he held that the accused was at fault by driving at an excessive speed and by failing to take into consideration the weather, the nature and the size of the road.

I **[10]** Having found no merits in the appeal, the learned Judicial Commissioner dismissed the appeal by the accused against conviction but allowed his appeal against sentence as adverted to in para. [5].

[11] Dissatisfied with the conviction and sentence, the accused applied for and obtained leave to appeal to this court on the following question:

> Whether the charge under Section 41(1) of Road Transport Act 1987 can import into the body of the charge the Defence of an Accused that while driving straight he lost control of the Motorcar (through no fault of the driver or through intervening cause) when such are not ingredients of Section 41(1).

The Appeal

[12] The accused canvassed the following issues before us:

(i) that the High Court and the Magistrate's Court erred in failing to find that the charge was bad in law when the defence of the accused that he lost control of his car which caused the accident was erroneously and illegally imported into the charge; and

(ii) that the High Court and the Magistrate's Court erred in failing to apply an objective test in determining whether the accused was driving in a manner that was dangerous to constitute an offence under s. 41(1) of the Act.

[13] In respect of the first issue, relying on the case of *Lim Chin Poh v. PP* [1969] 1 LNS 92; [1969] 2 MLJ 159, learned counsel submitted that there are three distinct offences laid out in s. 41(1) of the Act, namely:

(a) causing death by driving a motor vehicle on the road recklessly;

(b) causing death by driving a motor vehicle on the road at a speed which is dangerous to the public etc; and

(c) causing death by driving a motor vehicle on the road in a manner which is dangerous to the public etc.

[14] It was further submitted that the accused appeared to be charged under the third limb of the section ie, driving in a manner having regard to all circumstances which is dangerous to the public and causing death. The charge preferred against the accused reads "… semasa bergerak lurus telah hilang kawalan lalu masuk ke laluan bertentangan dan melanggar …" instead of "… driving … in a manner having regard to all the circumstances (including the nature, condition and size of the road, and the amount of traffic which is or might be expected to be on the road) dangerous to the public…". Learned counsel contended that the words "hilang kawalan" were completely strange to s. 41(1) of the Act and constituted a complete defence to the accused. The charge was thus bad in law.

[15] As regards the second issue that the intervening cause should be dealt with objectively and properly, which relates to the issue of *mens rea* and *actus reus*, learned counsel submitted that it was an unchallenged fact that the accused had lost control of his car when another car overtook him from the

left and had caused water to be splashed onto his windscreen which impaired his vision on the road. At that material time, he was driving straight along a familiar road at about 70kph. As such, this could not constitute an offence under the third limb of s. 41(1) of the Act. By the intervening cause ie, water splashing onto his windscreen, the accused could not and did not create any dangerous situation, nor was the accused at fault.

[16] Learned counsel contended that the learned Judicial Commissioner failed to appreciate that to prove a dangerous driving under s. 41(1), the prosecution must establish strictly that:

(a) a dangerous situation was created by the accused, which is an objective test; and

(b) when creating such a situation, the accused was at fault, which also requires an objective assessment.

[17] Learned counsel further contended that the offence under s. 41(1) of the Act has not been made out, particularly when the prosecution failed to establish the speed range of the accused's car at the material time. It was however conceded that the facts support a lesser offence under s. 43(1) of the Act.

[18] In opposing the appeal, it was argued by the prosecution that the extra facts incorporated into the body of the charge though not an ingredient of the charge, was to give the accused sufficient notice for purposes of preparing his defence. The incorporation of the extra facts was a mere irregularity which did not occasion any failure of justice and was curable under s. 422 of the Criminal Procedure Code. There was no failure of justice as the accused was able to meet the charge by adducing evidence to mount his defence ie, that water had splashed onto his windscreen due to a car overtaking him from the left lane which caused him to cross the road divider onto the opposite direction. He was also able to put forward the defence of automatism.

Our Decision

[19] As a matter of principle, an appellate court will not intervene with a decision of a trial court with whom the law entrusts the primary task of evaluating the evidence. The appellate court would only intervene if it is convinced that there was no judicial appreciation by the trier of fact of the evidence adduced at the trial and that the trial court was shown to be plainly wrong in arriving at its decision. (see *UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor* [2010] 9 CLJ 785; [2018] Supp MLJ 363; *Hamit Matusin & Ors v. Penguasa Tanah dan Survei & Anor & Another Appeal* [2006] 2 CLJ 251; [2006] 3 MLJ 289; *PP v. Ahmad Firdaus Zulkifli* [2017] 1 LNS 113; [2017] 3 MLJ 492).

[20] In *Davendar Singh Sher Singh v. PP* [2012] 1 LNS 261, Azahar Mohammed JCA (as he then was) had this to say on appellate intervention (at p 6):

> [9] … Nonetheless, it would be open to us to upset the findings made by a trial judge if such a finding is not supported by evidence or the decision is against the weight of the evidence or there is no proper judicial evaluation of the evidence or there is misdirection in law or the trial court has fundamentally misdirected itself. In this regard, judicial appreciation and evaluation of evidence is at the heart of the duty of the learned trial judge. It is the duty of the learned trial judge to undertake a positive evaluation of the evidence, which includes a careful analysis of the credibility and reliability of the witnesses for the prosecution (see: *Balachandran v. PP* [2005] 1 CLJ 85). It is also his duty to consider the entire evidence presented before him, including the evidence which favours the defence. On what constitutes judicial appreciation of evidence, it is apt to bear in mind the following words of Gopal Sri Ram JCA (as he then was) in *Lee Ing Chin & Ors v. Gan Yook Chin & Anor* [2003] 2 CLJ 19; [2003] 2 MLJ 97:
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> > A judge who is required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and, for good reasons, either accepting or rejecting the whole or any part of the evidence placed before him. He must, when deciding whether to accept or to reject the evidence of a witness, test it against relevant criteria. Thus, he must take into account the presence or absence of any motive that a witness may have in giving his evidence. If there are contemporary documents, then he must test the oral evidence of a witness against these. He must also test the evidence of a particular witness against the probabilities of the case. A trier of fact who makes findings based purely upon the demeanour of a witness without undertaking a critical analysis of that witness' evidence runs the risk of having his findings corrected on appeal. It does not matter whether the issue for decision is one that arises in a civil or criminal case: the approach to judicial appreciation of evidence is the same.

[21] The accused had, in his defence, explained the reason why he lost control of his motorcar at the material time which eventually caused the death of the deceased. In essence, his defence was that the accident happened because he lost control of his car when another car overtook him from the left, caused the water on the road to splash on his windscreen and impaired his vision. The accused was thus able to respond to the charge against him.

[22] As such, we find no merit on the first ground canvassed by the accused. We agreed with the submission of the prosecution that the incorporation of "… iaitu semasa bergerak lurus telah hilang kawalan lalu masuk ke laluan bertentangan …" in the charge against the accused for an offence under s. 41(1) of the Act has not occasioned a failure of justice to the

accused. Neither has the accused been misled in his defence (see *PP v. Ong Kia Chan* [2006] 4 CLJ 334; [2006] 7 MLJ 230; *Public Prosecutor v. Lee Hong Kee* [1968] 1 LNS 104; [1969] 2 MLJ 60. We therefore found no reason to interfere with the findings of the learned Judicial Commissioner that the charge had informed the accused with certainty and accuracy and that even if there was any error or omission, it was curable under s. 422 of the Criminal Procedure Code.

[23] In respect of the second issue, s. 41(1) of the Act provides:

> 41. (1) Any person who, by the driving of a motor vehicle on a road **recklessly** or **at a speed** or in a manner which having regard to all the circumstances (including the nature, condition and size of the road, and the amount of traffic which is or might be expected to be on the road) **is dangerous to the public,** causes the death of any person shall be guilty of an offence and shall on conviction be punished with imprisonment for a term of not less than two years and not more than ten years and to a fine not less than five thousand ringgit and not more than twenty thousand ringgit. (emphasis added)

[24] The accused was charged under the third limb of s. 41(1) RTA ie, for the offence of causing death by driving in a manner which is dangerous to the public. There are no dearth of authorities on what constitutes "dangerous driving" under s. 41(1) of the Act. In *Ramiah v. PP* [1972] 1 LNS 120; [1972] 2 MLJ 258, a case under s. 34A of Road Traffic Ordinance 1958 which is the antecedent of s. 41(1) of the Act, Raja Azlan Shah J (as His Majesty then was) observed that:

> It is not the law under section 34A of the Road Traffic Ordinance that merely because an accident had happened and a person had been killed, danger had in that sense arisen and therefore it must follow, as the night, the day, that the appellant was driving in a manner dangerous to the public.

Adopting the principles laid down in the case of *Regina v. Gosney* [1971] 3 All ER 220, His Lordship further said:

> ... In a case under section 34A, two things must be established. First, there must be a situation created by the accused which, viewed objectively, is dangerous. Dangerous driving is not defined in the Road Traffic Ordinance and it is up to the court to come to a decision on the evidence …
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> …
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> Secondly, the prosecution must prove that when creating such a situation the appellant must be at fault. "Fault involves a failure; a falling below the care and skill of a competent and experienced driver, in relation to the manner of driving and to the relevant circumstances".

[25] Ong CJ (Malaya) in the case of *Tan Thang Sang v. Public Prosecutor; Choong Sze Foong v. Public Prosecutor* [1973] 1 LNS 158; [1975] 1 MLJ 204, while commenting on the case of *Ramiah v. PP* (*supra*), said (at p. 205 (MLJ):

> … What really matters is the principle of law enunciated in *Ramiah*, namely, that driving is not necessarily dangerous because it leads to fatal consequences, but that a verdict of guilt can only follow a finding of fault on the part of the driver.

[26] Guidance can also be found in *Public Prosecutor v. Zulkifli Omar* [1998] 1 CLJ 1079; [1998] 6 MLJ 65 where Vincent Ng J said (at pp. 1084-1085 (CLJ); p. 71 (MLJ)):

> The dictum of Lawton LJ in the English Court of Appeal decision in the celebrated case of *R v. Guilfoyle* [1973] 2 All ER 844 – which concerned a lorry driver who was convicted of causing death by dangerous driving – is illuminating. He had this to say (at p 845):
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> > Cases of this kind [causing death by dangerous or reckless driving] fall into two broad categories; first, those in which the accident has arisen through momentary inattention or misjudgment [hereafter called 'the first category'], and secondly those in which the accused has driven in a manner which has shown a selfish disregard for the safety of other road users or of his passengers, or with a degree of recklessness [hereafter called 'the second category'].
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> This distinctive categorization of dangerous driving was discussed with ready approval by Ong CJ (Malaya) in the cases of *Tan Thang Sang v. PP; Choong Sze Foong v. PP* [1975] 1 MLJ 204. See also *R v. Boswell and Other Appeals* [1984] 3 All ER 353 (CA). And more recently, in 1993 this categorisation was also adopted in my decision in *Goh Kheng Seong v. PP* [1993] 1 MLJ 103.
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> It is precisely in recognition of this distinction between the two categories of offences under s. 41(1) for 'causing death by reckless or dangerous driving' that the Legislature has, in all its wisdom, made express provision under s. 41(4) that:
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> > The court may upon the trial of a person for an offence under this section [s. 41(1)] convict such person of an offence under section 42 [dangerous and reckless driving but without causing death] or section 43 [driving without due care and attention or without reasonable consideration].
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> As Parliament has not spelt out the meaning of 'driving dangerously' or 'driving recklessly' it is left to the courts to do so. To be guilty of the more serious category of the offence of reckless driving the driver (defendant) must have created an obvious and serious risk of injury to the person or damage to property and must either have given no thought to the possibility of that obvious risk, or have seen the risk and nevertheless decided to run it.
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> …

A In an offence under s 41(1), excessive speed is not the sole decider of reckless driving but there must also be a finding on the manner and other aspects of the defendant's driving which constituted recklessness, by having regard to the prevailing circumstances at the material time of accident, including the nature, condition, and size of the road, and the amount of traffic which is or might be expected on the road. The risk
B created by the manner in which the vehicle is driven must be both obvious and serious, and the court has to be satisfied that the essential or core ingredients of recklessness have been proved beyond reasonable doubt.

[27] Applying the principles in the above cases and looking at the prosecution's case as well as the defence of the accused as a whole, we found
C that the learned Judicial Commissioner fell into error in upholding the findings of the Magistrate. The defence of the accused that his vision was impaired due to the splash of water onto his windscreen which was caused by another car which overtook him prior to the accident, was not challenged by the prosecution. The Magistrate and the learned Judicial Commissioner
D failed to give sufficient consideration to the fact that the obvious and serious risk which resulted in the death of the deceased was not caused solely by the accused. There was an intervening cause which contributed to it and when viewed objectively, could not be said to be the fault of the accused.

[28] Apart from the fact that the accused had collided into, and caused the
E death of the deceased, no other evidence was led to show the recklessness of the accused. As propounded in *Ramiah* (*supra*), it is not the law that merely because an accident happened which led to fatal consequences, it follows that the appellant was driving in a manner dangerous to the public. The prosecution needed to show something more, ie, that the accused was driving
F in a manner which has shown a selfish disregard for the safety of other road users. This element was conspicuously absent in the prosecution's case. In our judgment, the essential or core ingredients of recklessness under s. 41(1) of the Act have not been proved beyond reasonable doubt by the prosecution.

[29] However, we found that the prosecution had established a case against
G the accused for driving without due care and attention or without reasonable consideration, an offence under s. 43(1) of the Act. For ease of reference, s. 43(1) is reproduced below:

Careless and inconsiderate driving

H 43(1) A person who drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road shall be guilty of an offence and shall on conviction be punished with a fine of not less than four thousand ringgit and not more than ten thousand ringgit and shall also be liable to imprisonment for a term not exceeding twelve months.

I

Conclusion

[30] For the above reasons, we allowed the appeal. We set aside the conviction and sentence passed by the Magistrate which was affirmed by the learned Judicial Commissioner and substituted for a conviction under s. 43(1) of the Act.

[31] Having heard the parties on mitigation, we sentenced the accused to a fine of RM10,000 in default three months' imprisonment. We ordered that the particulars of such conviction be endorsed on the accused's driving license pursuant to s. 43(2) of the Act.